UNITED
NATIONS

CCPR

International covenant
on civil and
political rights

Distr.
GENERAL

CCPR/C/SR.1611
4 August 1997

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Sixtieth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 1611th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 30 July 1997, at 10 a.m.

Chairman: Mrs. CHANET

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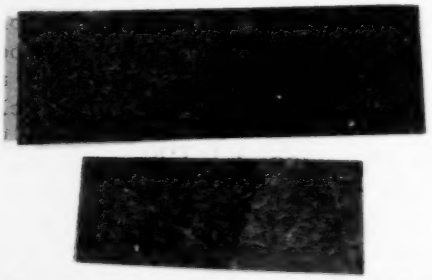

* The summary record of the second part (closed) of the meeting appears as document CCPR/C/SR.1611/Add.1.

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GE.97-17596 (E)

The meeting was called to order at 10.25 a.m.

FOLLOW-UP ON VIEWS ADOPTED PURSUANT TO ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE COVENANT (agenda item 7) (CCPR/C/60/R.1)

1. Mr. BHAGWATI (Special Rapporteur for the Follow-Up on Views), introducing the follow-up progress report (CCPR/C/60/R.1) at the invitation of the Chairman, recalled that since 1991 the Committee had been systematically requesting follow-up information and seeking views on all cases in which it had found a violation of the Covenant's provisions. At the beginning of the current session the Committee had received further information from a number of countries; in addition, the secretariat had received information from authors, mostly to the effect that the Committee's Views had not been implemented but also, in rare instances, reporting that the State party had given effect to those Views even when the State party itself had provided no such information. It was difficult to categorize the replies, but some 30 per cent of those received by the start of the current session could be deemed satisfactory. Many States parties' replies were perfunctory, simply saying, for instance, that the victim had failed to file a compensation claim within a statutory deadline. Equally unsatisfactory were those cases in which the Committee's recommendations had not been addressed at all or responded to only in part. Some had challenged the Committee's findings on factual or legal grounds. Details were given in the progress report, but he wished to highlight the situation in regard to certain States parties.

2. With regard to Jamaica, the cases fell broadly into two categories: those in which the Committee had recommended the person's release and those in which it had recommended compensation. During the current session, he had discussed, with a representative of the Jamaican Permanent Mission, the State party's failure to reply satisfactorily to as many as 39 Views, pointing out that replies to some requests had been outstanding since the Committee's fifty-sixth session. He had drawn attention to two main categories of cases - those involving violations of article 14 and those involving violations of articles 7 and 10. While recognizing the Jamaican authorities' problems, such as the difficulty of releasing persons from prison or commuting capital sentences in defiance of the general public's mood, he had stressed that the State party should nevertheless provide the Committee with some information. The Jamaican representative had promised to convey the Committee's concern to the Office of the Attorney-General in Kingston, with a view to possible action by the Government. It was hoped, therefore, that some progress could be reported before the Committee's next session.

3. With regard to Peru, a number of cases had been outstanding since 1988. The Committee was aware that a National Council on Human Rights had been set up, but had received no information about its activities. He hoped that matters could be taken up with the Permanent Mission of Peru at the Committee's next session.

4. In one case relating to Senegal, the author had rejected a compensation offer of 300,000 CFA francs and requested 1 billion CFA francs. That case should be removed from the list, since compensation had been offered and it was not for the Committee to concern itself with the amount. The same could be said about the communication from Zambia.

5. In another case relating to Spain, not only had the State party indicated that no compensation would be paid to the author but the latter also wished to "appeal" against certain aspects of the Committee's Views. The Committee could perhaps raise the matter when Spain's next periodic report was considered.

6. In the case of Suriname, whose authorities had not yet responded to Views forwarded in 1985, the Committee would take up the matter at its next session and, if no response was received, would place the case on the follow-up "blacklist" in its annual report. He also drew attention to the communication from Madagascar in that regard. Referring to the outstanding cases involving Trinidad and Tobago, he drew attention to the note on page 86 of the report about a possible follow-up fact-finding mission. As to the Democratic Republic of the Congo (formerly Zaire), everyone was aware of the current political and social instability in the country, but the Committee must nevertheless continue to seek the requisite follow-up information.

7. With regard to the case relating to the Republic of Korea, that country's Permanent Representative had provided, during the current session, a copy of a 1997 law which removed the union-related restrictions under which the author had been arrested. But no compensation had been paid and a claim brought by the author, having been dismissed in the civil courts, was currently the subject of an appeal before the Supreme Court, whose decision the Permanent Representative had been asked to communicate to the Committee as quickly as possible. On the basis of that outcome, the Committee could perhaps consider whether the case could be taken off the follow-up list.

8. Panama, too, had failed to respond, but he had been unable to contact that country's Permanent Representative. With regard to the communication from Cameroon, he had met a representative of that country and stressed that the State party had an obligation to provide a remedy; having submitted the very material on which the Committee had based its considerations, it could not claim lack of opportunity to look into the matter. The representative had promised to convey the Committee's concern to the authorities, but had expressed the view that the latter should have some margin of discretion and that a possible ex gratia payment would not necessarily imply the State party's responsibility. It had been impressed upon him that the amount of any award was no concern of the Committee.

9. The draft of that part of the progress report to be included in the Committee's annual report would list the States parties that had failed to respond to the follow-up action, namely, Democratic Republic of the Congo (Zaire), Dominican Republic, Ecuador, Equatorial Guinea, Jamaica, Libyan Arab Jamahiriya, Nicaragua, Panama, Peru, Republic of Korea, Togo, Trinidad and Tobago, Uruguay and Zambia. Perhaps the Republic of Korea could be deleted from the list in view of what he had said earlier.

10. Mr. SCHMIDT (Centre for Human Rights) suggested that the Committee could perhaps discuss, on the last day of the session, the list of States parties just referred to by Mr. Bhagwati. The Committee could also consider adding Cameroon to the list, in the light of the authorities' reply.

11. Lord COLVILLE congratulated Mr. Bhagwati on his admirable efforts, which had led to some progress. He wondered, however, why Suriname and Madagascar had been omitted from the "blacklist".

12. Mr. KLEIN thanked Mr. Bhagwati and the secretariat for their efforts in the follow-up procedures. Mr. Bhagwati had said that, in roughly 30 per cent of cases, the Committee received a favourable reply at the outset. He wondered whether an indication could be given of how many other replies could be considered partly favourable; if they represented a further 20 to 30 per cent, the result would be a more reasonable picture.

13. Mr. POCAR said that he, too, would appreciate that information. With regard to compensation awards, it might not always be prudent for the Committee to remain aloof, especially in cases of token or derisory amounts. In that connection, it would be useful, where unfamiliar currencies were cited, to indicate the equivalent amount in a major currency. He was in favour of follow-up fact-finding missions, and felt that their scope should be widened so as to enable the Special Rapporteur to look into all factors which might have a bearing on the State party's failure to cooperate properly. In that regard, challenges to the Committee, for example on the grounds that a complaint had been "grossly exaggerated", might stem from misunderstandings by the State party, resulting in failure to convey adequate information. That problem should perhaps be foreseen and tackled at the outset of the communication procedure. His comments in that regard were influenced by a recent exchange of views he had had with the Permanent Representative of Trinidad and Tobago in New York.

14. Mr. KRETZMER agreed with the previous speaker on the subject of compensation.

15. Mrs. MEDINA QUIROGA shared that view. She also wished to know what recommendations were contemplated with regard to the cases relating to Bolivia and Colombia. One Uruguayan case was very old; she wondered whether the Committee could suggest an actual compensation award instead of merely sending a reminder. Lastly, she drew attention to a correction required on page 8 of the report: at the bottom of the page, the text should refer to the Permanent Mission of Colombia, not Cameroon.

16. Mrs. EVATT expressed appreciation for Mr. Bhagwati's efforts. She noted, however, that difficulties could arise from the fact that terms such as "satisfactory" and "unsatisfactory" had not been defined, and wondered whether, in the light of the experience accumulated, the Committee could establish some definitions, perhaps by means of a working group.

17. The CHAIRMAN endorsed that suggestion. She recalled that a start had been made, in the Committee's previous annual report, by amending and clarifying certain terms.

18. Mr. BUERGENTHAL observed that in cases where the level of compensation awarded was derisory or unreasonable, the Committee might well be entitled to comment.

19. He suggested that the names of States parties on the follow-up "blacklist" might be announced, with explanations, at the Chairman's press conference that traditionally followed the conclusion of the Committee's sessions.

20. He concurred with Mrs. Medina Quiroga's suggestion that contact should be made with the Permanent Representative of Uruguay.

21. Mr. PRADO VALLEJO said that Spain's refusal to comply with the Committee's recommendation on communication No. 493/1992 was a serious matter; contact should be made as soon as possible with the Permanent Mission in New York or Geneva to seek clarification.

22. He agreed that information concerning countries on the "blacklist" might be provided at press conferences following Committee sessions.

23. Mr. YALDEN agreed that the Committee was entitled to comment on compensation issues: as appropriate, conversions into more familiar currencies would help in assessing the true value of awards. The mention of blacklisted countries at the end-of-session press conferences would be a source not only of information but also of publicity, always a powerful weapon in human rights affairs.

24. The CHAIRMAN remarked that because of the Swiss national holiday on 1 August no press conference could be held at the end of the present session. But she would see to it that information on the follow-up "blacklist" was included in the material concerning the session to be provided to journalists.

25. Mr. ANDO commended the results obtained through the mechanism for follow-up on Views. He agreed that the Committee should be entitled to comment when amounts of compensation awarded appeared merely nominal. Concerning the "blacklist", he said that care must be taken to establish objective standards for including countries; no State party must be able to claim that it was the victim of discriminatory treatment.

26. On the subject of communication No. 586/1994 involving the Czech Republic, he noted from the report that the State party was not prepared to give effect to the Committee's recommendations. That seemed to be a serious matter, and clarification should be sought as soon as possible from the Permanent Mission.

27. Mrs. GAITAN DE POMBO welcomed the Special Rapporteur's useful and informative report. She agreed with speakers who had argued that the Committee should be able to comment, as appropriate, on the question of compensation awarded.

28. The CHAIRMAN associated herself with the appreciation expressed for the report by the Special Rapporteur, whose task had not been an easy one.

29. On the matter of compensation, she observed that the Special Rapporteur's comment that the Committee would not interfere related specifically to a case where the amount of compensation demanded was huge

and where the author had requested the Committee to arbitrate: that would obviously be impossible. More generally, however, the Committee might reserve the right, in future, to ascertain that any compensation awarded as a remedy could be considered equitable.

30. As to the idea of a mission to Trinidad and Tobago, she thought that would be well worth exploring, especially as the State party itself had indicated its desire for improved cooperation at all stages of the procedure involving communications.

31. Mr. BHAGWATI (Special Rapporteur for the Follow-Up on Views) thanked Committee members for their comments and suggestions. He agreed with Lord Colville that there were grounds for including Madagascar and Suriname in the follow-up "blacklist"; calls for replies from those countries in time for the sixtieth session of the Committee had gone unanswered. He further agreed that the publicity of a press conference constituted a powerful means of bringing the pressure of public opinion to bear on defaulting States.

32. Obviously, compensation should not be an illusory or threadbare remedy, but the Committee was not, he believed, really in a position to pronounce on the adequacy or otherwise of amounts actually awarded. In the specific cases mentioned in his report, he saw no reason for the Committee to intervene; it might, however, decide that in future it could do so when the amount was obviously absurd.

33. He agreed that it would be useful to make direct contact with the Permanent Missions of Uruguay and the Czech Republic during the next session of the Committee. He further agreed with the suggestion that the Committee should give thought to establishing some sort of yardstick by which to measure its degree of satisfaction or dissatisfaction with a State party's performance. And as Mr. Ando had remarked, there should be objective standards for blacklisting countries.

34. Any mission to Trinidad and Tobago, or to any State party, should have a broad mandate, notably with regard to the provision of guidance and advice on procedures to be observed at all stages of the communications process.

35. Mr. SCHMIDT (Centre for Human Rights), responding to Mr. Klein's remarks, said that a 25 to 30 per cent success rate, covering both follow-up submissions received within established deadlines and information supplied in response to reminders, would seem to him to correspond to reality. The goal of satisfactory compliance remained distant, and there must be no let-up in persistence and persuasion.

36. He agreed that for fact-finding missions to be successful they should have broad mandates. That would certainly be the case if Trinidad and Tobago was to be visited.

37. Concerning follow-up consultations, he said that the Czech Republic would be placed on the list for the Committee's sixty-first session; Spain could also be added. In reply to Mrs. Medina Quiroga's inquiry, he said that Bolivia had, following consultations in New York, indicated that the matter at issue had been referred to a military court for investigation. With regard to

Colombia, he said that, following enabling legislation in September 1996, a ministerial committee and a tribunal in Bogotá were currently establishing the amount of compensation to be paid to victims. The Centre for Human Rights would update the progress report in respect of those two countries as soon as further information was received.

38. Mr. BUERGENTHAL formally proposed that the Chairman should be authorized to begin negotiations with Trinidad and Tobago and the Centre for Human Rights on the subject of a fact-finding mission to that State party.

39. The CHAIRMAN said that due note had been taken of that proposal.

The public part of the meeting rose at 11.25 a.m.